

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Frank Scott Dabney and Kathryn Harrelle)
Dabney,)
)
Appellants,)
)
v.)
)
Bank of America, N.A.)
)
Appellee.)
)
)

Appeal from the United States Bankruptcy Court for the District of South Carolina
The Honorable John E. Waites
Adversary Case No.: 17-80037-JW (Chapter 13)

**APPELLANTS' DESIGNATION OF ITEMS TO BE INCLUDED IN THE
RECORD ON APPEAL and STATEMENT OF ISSUES TO BE PRESENTED**

Jason Scott Luck (Fed. Id. 9696)
jluck@garrettlawsc.com
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)

and

Robert B. Varnado (Fed. Id. 6478)
rvarnado@brown-varnado.com
Brown & Varnado, LLC
103 Church Street
Mt. Pleasant, SC 29464
843.737.7300 (phone)
843.654.5109 (telefax)
Attorneys for Appellants

COMES NOW THE Appellants, Frank Scott Dabney and Kathryn Harrelle Dabney (“Dabneys”), by and through their undersigned attorneys and pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure, who would make their *Designation of Items to Be Included in the Record on Appeal* and *Statement of the Issues to be Presented*.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

- a. Docket Entry 1 – Plaintiffs’ Complaint.
- b. Docket Entry 17 – Answer to Complaint of Bank of America, N.A.
- c. Docket Entry 32 – Motion for Judgment on Pleadings of Bank of America, N.A.
- d. Docket Entry 33 – Brief/Memorandum to Motion for Judgment on Pleadings.
- e. Docket Entry 39 – First Motion to Amend (with proposed Amended Complaint).
- f. Docket Entry 40 – Objection to Motion for Judgment on Pleadings.
- g. Docket Entry 45 – Memorandum in Opposition to Motion to Amend.
- h. Docket Entry 46 – Reply Memorandum to Objections.
- i. Docket Entry 47 – same.
- j. Docket Entry 50 – Order Granting Defendant’s Motion for Judgment on Pleadings and Denying Plaintiff’s Motion to Amend.
- k. Docket Entry 52 – Notice of Appeal.
- l. Transcript of September 28, 2017 hearing (Transcript Oder Form AO345 attached and response to same).

STATEMENT OF ISSUES TO BE PRESENTED

1. Did the Bankruptcy Court err in applying South Carolina common law, displaced by the Uniform Commercial Code, to determine that all documents executed contemporaneously with the delivery of a negotiable instrument must be read as a single unified document/agreement?

2. Did the Bankruptcy Court determine single contract construction would not destroy the negotiability of the Note?

3. Did the Bankruptcy Court err in interpreting the Official Comment 5 to former South Carolina Code Ann. § 36-3-119 (2006), which makes it clear that the inquiry is controlled by what the Note itself states or reflects, not what the collateral agreement says. In other words, did the Bankruptcy Court err in inquiring into the terms of a collateral agreement, instead of the terms of the Note?

4. Did the Bankruptcy Court's err in determining that the Note is a negotiable instrument?

5. Did the Bankruptcy Court ignore the plain language of the Note memorializing its intent not to be construed as a single contract with the mortgage?

6. Did the Bankruptcy Court err in determining that Bank of America was in possession of the Note via a transfer in 2008?

STATEMENT ON APPEALS IN RELATED CASES/ADVERSARY PROCEEDINGS

Pursuant to the November 20, 2017 letter from Ms. Betina Mobley to counsel and the Trustee, indicating that the Designation must include a statement whether or not there is, or has ever been, an appeal to the District Court in any related case or adversary proceeding, the Dabneys and their counsel believe the answer to be no.

Dated: 12/1/2017

/s Robert B. Varnado

Robert B. Varnado (Fed. Id. 6478)
rvarnado@brown-varnado.com
Brown & Varnado, LLC
103 Church Street
Mt. Pleasant, SC 29464
843.737.7300 (phone)
843.654.5109 (telefax)

and

Jason Scott Luck (Fed. Id. 9696)
jluck@garrettlawsc.com
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)

Attorneys for Plaintiffs

Certificate of Service
17-80037-JW
2:17-cv-03151-RMG

I did this date serve the attached document(s) on the parties listed below by placing them in the United States mail with proper postage affixed thereto and addressed as follows or via the ECF system:

Bankruptcy Court Clerk
District of South Carolina
1100 Laurel Street
Columbia, SC 29201-2423

Jason M. Wyman, Esquire, Trustee
Office of the Chapter 13 Trustee
P.O. Box 997
Mt. Pleasant, SC 29465-0997

Brian A. Calub, Esquire
McGuire Woods LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202-2146

United States Trustee (UST)
Strom Thurmond Federal Building
1835 Assembly Street
Suite 953
Columbia, SC 29201

Date: 12/1/2017

s/ Robert B. Varnado

Robert B. Varnado